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February 23, 2011

VIA OVERNIGHT COURIER

Attn: Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

FEB 25 2011

Part of
Public Record



Re: Portland & Western Railroad, Inc. – Petition for Declaratory Order –
Certain Rates & Practices as Applied to R K Storage & Warehousing, Inc.

STB Docket No. FD35406

Dear Chief:

Enclosed are the original and 10 copies of R K Storage & Warehousing, Inc.'s Motion to File Reply to PNWR's Motion and Proposed Reply, and to PNWR's Recently Filed Correspondence with STB.

Thank you for your attention to this matter. Please contact me by email or telephone if you have any questions.

Sincerely,

Larry R. Davidson

Enclosures

cc: P. Campbell Ford
Timothy Coleman

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD35406

**PORTLAND & WESTERN RAILROAD, INC. – PETITION FOR
DECLARATORY ORDER – CERTAIN RATES AND PRACTICES AS APPLIED
TO RK STORAGE & WAREHOUSING, INC.**

**MOTION TO FILE REPLY TO PNWR'S MOTION AND PROPOSED REPLY,
AND TO PNWR'S RECENTLY FILED CORRESPONDENCE WITH STB**

SUBMITTED ON BEHALF OF R K STORAGE & WAREHOUSING, INC.

BY

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD35406

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DECLARATORY ORDER – CERTAIN RATES AND PRACTICES AS APPLIED
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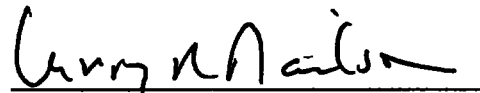
Portland & Western Railroad, Inc. ("PNWR") earlier filed a Motion to File Reply to Response filed by R K Storage & Warehousing, Inc. ("R K"), with its Proposed Reply attached as an exhibit. PNWR followed that Motion with correspondence dated February 15, 2011 to the Surface Transportation Board ("STB"). R K requests the opportunity to respond to PNWR's mischaracterization of R K's Response, and to its correspondence to the STB.

A copy of R K's Proposed Reply is attached as Exhibit A.

VERIFICATION.

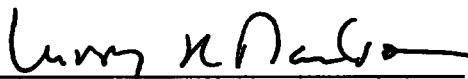
I, Larry R. Davidson, declare under penalty of perjury that the foregoing is true and correct and that I am qualified and authorized to file this motion.

Executed on February 23, 2011.


Larry R. Davidson

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to File Reply to PNWR'S Motion and Proposed Reply, and to PNWR'S Recently Filed Correspondence with STB, has been furnished to Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, D.C. 20423-0001, via Federal Express, P. Campbell Ford, Ford, Miller and Wainer, P.A. (lead counsel for PNWR), 1835 N. Third Street, Jacksonville Beach, Florida 32250 via Federal Express, and Timothy Coleman (local counsel for P & W), 805 SW Broadway, 8th Floor, Portland, Oregon 97205 via first class mail, postage prepaid, on this 23rd day of February, 2011.



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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD35406

**PORTLAND & WESTERN RAILROAD, INC. – PETITION FOR
DECLARATORY ORDER – CERTAIN RATES AND PRACTICES AS APPLIED
TO R K STORAGE & WAREHOUSING, INC.**

**REPLY TO PORTLAND & WESTERN RAILROAD, INC.'S REPLY TO R K STORAGE
& WAREHOUSING, INC.'S RESPONSE TO PETITION FOR DECLARATORY ORDER
– CERTAIN RATES AND PRACTICES AS APPLIED TO R K STORAGE &
WAREHOUSING, INC.**

SUBMITTED ON BEHALF OF R K STORAGE & WAREHOUSING, INC. BY

Larry R. Davidson

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EXHIBIT 1A
PAGE OF

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD35406

**PORTLAND & WESTERN RAILROAD, INC. – PETITION FOR
DECLARATORY ORDER – CERTAIN RATES AND PRACTICES AS APPLIED
TO R K STORAGE & WAREHOUSING, INC.**

**REPLY TO PORTLAND & WESTERN RAILROAD, INC.'S REPLY TO
R K STORAGE & WAREHOUSING, INC.'S RESPONSE**

R K Storage & Warehousing, Inc. ("R K") responds to Portland & Western Railroad, Inc. ("PNWR")'s Reply in the order addressed in PNWR's Reply.

1. MAXIMUM CAPACITY AT R K STORAGE'S TRACK.

PNWR dwells (PNWR Reply, p. 6) on R K's prior observation (R K Response, p. 6, ¶ 23, that R K's spur can hold four railcars. However, in order to give PNWR the benefit of the doubt, R K did not rely upon the four car capacity, and only used PNWR's three car theme in R K's Response regarding the extensive under-utilization of R K's track. (R K Response, p. 6, ¶ 23.)

PNWR's submission of the Todd Vincent Affidavit (Reply, Exhibit 1), at least the first eight of the nine page paragraphs contained in that Affidavit, is therefore completely unnecessary and a time consuming distraction for the STB.

PNWR thus distorts R K's position before the STB regarding PNWR's spotting of cars on R K's track.

II. PNWR HAS NO CONTROL OVER THE CONSOLIDATION OF RAILCARS.

PNWR alleges, that R K alleges "for the first time" (PNWR Reply, p. 7), that R K gets slammed with a huge influx of railcars "courtesy of the railroad" as a result of its railcars being consolidated in locations such as Pasco, Washington.

That is not true; this is not the first time that R K has mentioned this to PNWR.

One example is the Affidavit of Roger Krofft, dated January 6, 2010, previously filed in Multnomah County Circuit Court, copy attached hereto as Exhibit 1. In that Affidavit (¶ 7), Mr. Krofft, R K's owner, stated that he would receive up to 20 cars at one time.

PNWR does not deny this assertion. Instead, PNWR merely responds by stating it is not PNWR's problem. PNWR Reply, Exhibit 1, Affidavit of Todd Vincent, ¶ 9. PNWR states that it cannot put pressure on the upstream rail carrier (BNSF).

This topic is also discussed in Section IV below.

PNWR again attempts to deflect its poor service record by degradation of R K's good name and credibility.

III. R K STORAGE MISPERCEIVES THE PRIORITIES OF A RAIL CARRIER.

To the contrary, R K understands quite well the priorities of this particular rail carrier, i.e. serve the big guys first and, meanwhile, for R K to go to the end of the line. PNWR has been loud and clear and unapologetic in that message, and R K gets it.

IV. AUTHORITIES FOR CALCULATING DEMURRAGE AND ISSUING DEMURRAGE CREDITS.

a. PNWR states that "R K contends that it does not know how demurrage is calculated when a large load of railcars for R K Storage arrives at the Willbridge Interchange." PNWR Reply, p. 8.

That is a misstatement. R K stated that "PNWR has not cited any reference to its tariff regarding the imposition of demurrage charges when PNWR receives numerous R K railcars at one time at its Willbridge Interchange." R K Response, p. 5, ¶ 17.

R K understands that R K is subject to the same demurrage charges regardless of how many cars are brought into town at one time.

PNWR benefits by not having control (or asserting that it has no control) over the BNSF's delivery of multiple cars at one time. PNWR knows there is no way that a small time operation like R K can absorb all of those cars at one time. PNWR constructively places the cars for R K, turns on the demurrage meter and watches the revenue stream pour all the way back east to the headquarters of this behemoth.

b. PNWR states that "R K Storage believes there should be no demurrage incurred while railcars are in constructive placement." PNWR Reply, p. 9.

R K did not make that statement.

Instead, R K asserted that it owed demurrage charges where it held cars more than two days. R K Response, p. 11, ¶ 14. R K did not state that it would never be responsible for demurrage charges for constructively placed cars. PNWR has simply failed to state a legitimate claim for demurrage charges in this case.

FEBRUARY 15, 2011 CORRESPONDENCE.

PNWR's tardiness in filing its Petition with the STB has made it nervous about the possibility that the local circuit court might bring this matter back home for resolution. That would not be all that bad.

The fact witnesses as to PNWR's handling of its railcars in the Portland area are located, unsurprisingly, in Portland.

Regardless of how much time and effort the STB devotes to this matter, it will be severely disadvantaged when it comes to ferreting out exactly how PNWR manages, or mismanages, its railcars in the Portland area, and the impact of those practices on R K.

R K has not disputed the amounts of the daily demurrage charges. The expertise of the STB is better suited for evaluating the reasonableness of matters such as the daily demurrage charges assessed by rail carriers.

Conversely, the expertise and time of the STB is not necessary for determining factual practices of a rail carrier, and given the lack of a hands on evidentiary hearing, is simply not suited to make findings regarding those practices.


This dispute is local in nature, the witnesses are here, and the circuit court is here. There is simply no need for an East Coast adjudication of a West Coast fact specific dispute.

The STB should not stretch its limited resources by devoting time to a dispute which can be better handled by a local fact finder.

VERIFICATION.

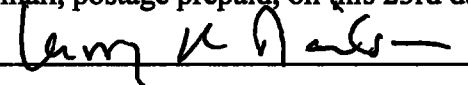
I, Larry R. Davidson, declare under penalty of perjury that the foregoing is true and correct and that I am qualified and authorized to file this motion.

Executed on February 23, 2011.


Larry R. Davidson

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I hereby certify that a copy of the foregoing Motion to File Reply to PNWR'S Motion and Proposed Reply, and to PNWR'S Recently Filed Correspondence with STB, has been furnished to Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, D.C. 20423-0001, via Federal Express, P. Campbell Ford, Ford, Miller and Wainer, P.A. (lead counsel for PNWR), 1835 N. Third Street, Jacksonville Beach, Florida 32250 via Federal Express, and Timothy Coleman (local counsel for P & W), 805 SW Broadway, 8th Floor, Portland, Oregon 97205 via first class mail, postage prepaid, on this 23rd day of February, 2011.



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Attorney for R K Storage & Warehousing, Inc.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

PORTLAND & WESTERN
RAILROAD, INC.,

Plaintiff,

v.

RK STORAGE & WAREHOUSING,
INC.,

Defendant.

Case No. 0907-10274

AFFIDAVIT OF ROGER KROFFT

STATE OF OREGON)

COUNTY OF MULTNOMAH)

I, Roger Krofft, being first duly sworn, state as follows:

1. I am the owner and president of R K Storage & Warehousing, Inc. ("R K Storage"), an Oregon corporation which we formed in 1982 and have owned it since that time. The business of R K Storage is the warehousing and trucking of steel products. I have two full time employees, a welder and a truck driver, two part time truck drivers, and one part time office assistant.

EXHIBIT 1
PAGE 1 OF 3

2. R K Storage is operated on property located at 10937 NW Front Avenue, Portland which I purchased about five years ago. The Portland and Western Railroad, Inc. ("Railroad") operates on a track which is located nearby. A spur from the Railroad extends tracks on to our property, thus enabling us to receive rail cars. The Railroad has operated on the nearby tracks since I purchased the property.

3. Our problems with the Railroad evolves from the premise that the Railroad does what it wants, when it wants, and how it wants. We are a captive shipper, since there is no other railroad operating on the nearby tracks. The commodities that we handle, primarily steel, are best transported over the rail and not by motor carrier. Thus, the Railroad has no competition.

4. My spur can handle three rail cars, and even four rail cars if the cars are smaller.

5. The Railroad accumulates rail cars sent by my customers at another location, then brings them to the nearby Wilbridge interchange at which time the free time of two days begins for me to receive the cars, unload them and give notice to the Railroad that the cars are ready to be pulled from my spur. After the passage of two days, the Railroad starts to charge me demurrage.

6. The problem is that the Railroad's service is very spotty. In the past, I averaged approximately 25-30 cars per month. Since my spur can accommodate three rail cars at one time, and since I have two days free time for each car, I could easily accommodate those 25-30 cars on a monthly basis. In fact, with that history of usage, my spur was greatly underutilized.

7. However, there were several occasions where no cars were spotted at my spur for several days, and then I would be informed that several cars, up to 20, were now in town and available to be unloaded. Since I could not accommodate all of those cars at one time, the cars would be deemed constructively placed, and the two days free time would commence.

8. Once the rail cars were placed on my spur, I would usually have the car unloaded within 8 to 10 hours, and in any event no later than 24 hours, and I would immediately inform the Railroad that the car was ready to be removed from my spur, since I did not want to be charged for keeping the car over the free time.

9. There were several times when the Railroad was slammed with rail cars from various customers, which necessitated the storage of rail cars by the Railroad on various sidings available to the Railroad. When that occurred, older rail cars would get buried behind more recently arrived rail cars. I would request the older cars, and the train engineer would frequently tell me that he did not have time to dig out the older cars, and instead would bring me the more recently arrived rail cars. I sometimes acquiesced to this practice, since the train crew was overwhelmed with work, and it did not matter to me which cars were unloaded first. However, the train crew apparently did not report this practice to the demurrage people, and the Railroad would impose demurrage charges when I was doing it a favor by not burdening its crew with requests to dig out the old cars first.

10. On several other occasions, the Railroad would tell me that a car would be spotted on my spur at such and such time, and in reliance upon that information, I would have crews ready to unload the steel. However, the Railroad would frequently no-show, costing me badly needed revenue and still leaving me waiting for the car to be spotted.

11. In September 2007, my attorney requested, on my behalf, a copy of the Railroad's switching records, in order to prove my point. However, here it is more than two years later, and the Railroad has still not responded to that request. Instead, the Railroad has furnished, through its numerous attorneys, a statement indicating that it will not furnish those records, unless some federal agency on the East Coast says otherwise.

12. I own and operate a small business, and cannot afford to litigate this case through a federal agency located thousands of miles from me, yet in the back yard of the Railroad. Trial is set for March 2010, and I need to get this over with, which will happen if the court keeps this case here in Oregon. The witnesses are located here, the events occurred here, the Railroad and I operate here, the court is here, and there is no reason to make a federal case out of this.

Roger Krofft

Roger Krofft

SUBSCRIBED AND SWORN to before me this 20th day of January, 2010.

Elaine M. Dexheimer

NOTARY PUBLIC FOR OREGON

My Commission expires: 4/24/2010

Page 3 - AFFIDAVIT OF ROGER KROFFT

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